IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 9626 of 2006
DATE OF DECISION:16.11.2006

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Punjab State Electricity Board and another. ..PETITIONER

VS.

The Presiding Officer, Labour Court and another.

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE J.S. NARANG.
HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- Mr. Amit Mehta, Advocate
for the petitioners.

Mr. Lalit Pathak, Advocate
for respondent No.2.

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ARVIND KUMAR, J.

The petitioner-department is aggrieved with the award dated 7.12.2005 passed by respondent No.1.

The facts necessary for disposal of the instant writ petition are that an industrial dispute was raised by the workman by serving a demand notice dated 30.7.1999. His stand was that he served the petitioner-department from 1.11.1986 to 31.5.1993, but they terminated his services on 1.6.1993 without adopting due procedure and persons junior to him as well as fresh hands were recruited. His claim was contested by the petitioner-department. Their stand was that the services of petitioner were never terminated rather he himself abandoned the job on 1.6.1993 and that the claim is bad on account of delay and latches The dispute was referred to the Labour Court for adjudication.

The Labour Court vide the impugned award held that the workman had not abandoned his services, rather the same were terminated by the petitioner-department in violation of provisions of Section 25-F of the Act. The Labour Court further turned down the prayer of the petitioner-department of limitation. It accordingly ordered re-instatement of

respondent No.2-workman with continuity of service, without back wages.

Dissatisfied with the same instant petition has been filed by the petitioner-department.

Upon notice, respondent No.2-workman filed the written statement and thereby justified the award of the Labour Court. Dismissal of instant petition has been sought.

We have heard learned counsel for the parties and have also gone through the paper-book as also the impugned award carefully.

The learned counsel for the petitioner has argued that the Labour Court has erred in rejecting their plea of abandonment by holding otherwise that the services of workman were terminated and secondly that the claim of the workman is stale being suffered from delay and latches, which also strengthen the plea of abandonment.

The contentions are meritless for variety of reasons.

Abandonment of service means voluntary relinquishment of office by an employee. To constitute abandonment, there must be clear intention of the employee to give up his duties. It must be total so as to give rise to one and only one inference that the employee has abandoned the service. The inference that an employee has abandoned or relinquished his service cannot be presumed unless it is clear from the facts that the employee intended to abandon service. The law requires something more to make such absence as voluntary relinquishment. However, in the instant case no evidence worth of any credence has been brought by the petitioner-department to prove its plea of abandonment. Mere assertion is not suffice. Once the petitioner-department has raised the plea of abandonment of services by the workman, which, on the other hand has been categorically denied by the workman, the onus lies heavily upon the petitioner to prove the said plea by adducing cogent and convincing evidence. But nothing of this sort has been done by the petitioner in the instant case. A bare perusal of the impugned award shows that though the petitioner-department produced alleged muster roll for the month of July in which the workman was shown as absent, but that self-serving document is of no help to the petitioner. The petitioner-department has failed to show anything from the record that as to whether any notice was issued to the workman requiring him to join his duties, after his alleged absence from 1.6.1993. On the other

hand, there is a specific plea by the workman that on 1.6.1993 when he came to his duties, he was not allowed to do any work. Admittedly, the workman had completed 240 days preceding 12 calendar months. Therefore, the provisions of Section 25-F of the Act were to be complied with. There was non-compliance of mandatory provisions of Section 25-F of the Act. Thus, in these circumstances, the conclusion of the Labour Court that it is not the case of abandonment rather the services of workman were terminated in violation of provisions of Section 25-F of the Act, does not call for any interference.

No doubt the respondent-workman raised the industrial dispute after about 6 years of his termination and his conduct in raising the demand notice after a period of six years, can be considered to be a relevant factor in refusing to grant any relief to him. However, in the instant case, there was a clear-cut averment of the respondent-workman in the demand notice Annexure P-1 that he had submitted representations for reinstatement and also applied when the retrenched workers were re-employed in 1997 by the petitioner-department. Ordinarily, mere assertions may not suffice, but the petitioner-department in reply to the demand notice had not controverted the said stand of the respondent-workman. When dispute had been kept alive by him, it does not cause the dispute to wane into total eclipse. Therefore, in this particular case, when the averment of the workman had not been controverted by the petitioner-department, it cannot be concluded that dispute ceased to exist after some time. Moreover, the petitioner-department had also not raised any such grouse of delay before the appropriate Government. Not only this, the petitioner-department had not challenged the reference on the question of limitation. As and when the Government made a reference of the dispute raised by the workman for adjudication to Labour Court, it was open to the department to impugn the same by filing a writ petition. However, nothing such had been done by the petitioner-department. In any case, we are satisfied that the delay in filing the demand notice, has been kept in mind by the Labour Court, inasmuch as the Labour Court while granting relief to the respondent-workman has held him not to be entitled for any back wages.

The High Court under Articles 226/227 of the Constitution will not interfere with the concurrent findings of fact recorded by the Labour

Court unless they are perverse. However, as discussed above findings of the Labour Court are neither perverse or based on no evidence

In view of the above, we do not find any merit in the present writ petition and the same is dismissed accordingly. No costs.

(ARVIND KUMAR)
JUDGE

November 16,2006 **(J.S. NARANG)**
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